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Commissioner of
Political
Report to the
Governor and the
Legislature for
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REPORT TO THE GOVERNOR AND THE LEGISLATURE FOR FISCAL YEAR 1989

DISCARD

Prepared and Published by
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POLITICAL PRACTICES

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July 31, 1992

The Honorable Stan Stephens, Governor of Montana
The Honorable Hal Harper, Speaker of the House of Representatives
The Honorable Joseph P. Mazurek, President of the Senate
The Honorable John A. Mercer, House Minority Leader
The Honorable Bruce D. Crippen, Senate Minority Leader

Dear Gentlemen:

This annual report is submitted to you in accordance with the provisions of section 13-37-120, Montana Code Annotated (MCA). I hope that you will find it to be of interest and value.

The law dictates that the commissioner report annually concerning actions taken and include in the report the names, duties, and salaries of all persons employed and money disbursed. This report goes beyond those minimum requirements, however, in the interest of providing a more complete disclosure of the affairs of the office and of providing summary information gleaned from documents filed with the office.

All documents and records on file with this office--except, of course, for privileged personnel and investigative matters--are available for public inspection and photocopying. In addition, beginning with the 1980 election cycle, reported receipts and expenditures of statewide candidates and ballot issue committees and of state district candidates have been compiled and published in book form. Copies for the 1986, 1988, and 1900 elections still are available.

Your thoughts and comments about this report are welcome. This report also has been made available to the State Library, the Historical Society Archives, and the Legislative Council library.

Sincerely,

Dolores Colburg

DOLORES COLBURG
Commissioner

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INTRODUCTION

Fiscal year 1989 saw a stabilizing of the office budget and staff surrounding 3.0 full-time equivalents (FTE), with little debate or discussion about the relatively trim biennial budget request submitted to and approved by the 1989 legislature. The year also brought opportunity for some "cleaning up" legislation in the campaign finance and practice laws and the lobbying disclosure laws.

If legislative activity could be typified as calm and cautious--compared to the 1987 regular session, in particular--the other affairs of the office might best be characterized as anything but "business as usual." It turned out to be a year of more of everything--more candidates, more complaints, more advisory opinions, more telephone calls, more people coming to the office to review files.

With those demands, it was all the more reassuring that the office finally had been automated, with each staff member having a computer.

I. ORGANIZATION AND ADMINISTRATION

MAJOR ACCOMPLISHMENTS

+ Only one effort was made to eliminate the independent commissioner, and it at least was couched within the context of strengthening some of the functions of the office and transferring them elsewhere. Every legislative session but one since this agency came into being in 1975 has seen legislation introduced to abolish it.

+ A compilation of reported receipts and expenditures of state district and statewide candidates and statewide ballot issue committees was published in the spring of 1989. Campaign Financing 1988 numbered 664 pages--more than twice the size of the previous edition covering the 1986 elections--reflecting a most active campaign season. The book listed all individual contributors giving $75 or more to statewide candidates and committees ($35 for all other levels of candidates and committees) by name, address, and occupation. With new legislative authority, for the first time a charge could be made for the book--except to libraries--to recover printing costs; the fee of $20 per copy was set.

+ Accurate and methodical checking of more than 1,500 campaign finance reports--totaling over 15,000 pages--was accomplished in timely manner. Report checking was both intensive and extensive when measured against the reporting requirements set out in law. Questions or concerns about reports were pursued through telephone calls to candidate and committee treasurers and sometimes by letter.

+ A record number of written complaints and written requests for advisory opinions was handled as promptly as time and resources allowed and as investigations could proceed. The sheer volume of complaints and advisory opinion requests might speak to a heightened awareness of a major function of the office; that is, not merely a depository of documents, but a place for rulings and interpretations when contention or lack of clarity occur.

+ Candidates were promptly informed of their obligations under the campaign finance and practice laws by sending letters and information to them on the very day they officially filed for office. This was accomplished by obtaining daily--even twice daily close to the filing deadline--from the secretary of state the names and addresses of candidates who had filed for office that day.

+ A third IBM computer system, dot-matrix printer, and surge protector--as well as required software packages and two more computer work stations (making three in all)--were purchased from savings in the personal services category of the budget.

+ Forms for registering lobbyists and employers of lobbyists (principals) were reviewed and revised and then were printed late in 1988 to accommodate lobbying registration in advance of the 1989 legislative session.

LEGISLATIVE ACTIVITY

Biennial Budget Request

The budget request submitted to the 1989 legislature for the succeeding biennium (FY 1990 and FY 1991) was based on 3.0 full-time equivalent (FTE) staff, including the commissioner. It was essentially a status quo budget request with adjustments only for expected increases in such areas as postage and telephone and for inflation rates in other categories.

As usual, the budget request for the commissioner's office was considered in the very first week of the session by the General Government and Highways Appropriations Subcommittee. The committee approved the request with little discussion, other than an expressed concern by the chairman that the work of the office

could be accomplished with just three staff. The commissioner noted that the office's resources had been strained by the 1988 election cycle with brisk primary competition among an unusually large number of statewide candidates followed by active ballot issue controversy that produced a record number of complaints. Acknowledging that the last half of 1988 had been a challenge, she viewed it as an aberration and unlikely to occur again. (See **COMPLAINTS** section of this report for details.)

Finally, as enacted into law in HB 100, the biennial budget for the office was as follows:

Biennial Appropriation -- HB 100

	FY 1990	FY 1991	Biennium
Administration	$103,502	$106,614	$210,116
Audit	2,214		2,214
TOTALS	**$105,716**	**$106,614**	**$212,330**

A separate bill provided for modest salary increases for state employees and officials.

Bills Affecting Office

Following is a brief discussion of legislation introduced--both at the commissioner's request and by others--relating to or having an impact on the office.

HB 71, to remove language prohibiting soliciting voter information within 200 feet of polling places

Introduced by Representative Tim Whalen on request of the commissioner, this bill would delete the language in section 13-35-211, MCA, prohibiting a person from asking voters within 200 feet of a polling place how they intended to vote or how they already had voted. Called "exit polling," NBC successfully challenged the provision in Montana law as being unconstitutional (see separate discussion under **COURT ACTIONS**); thus, this bill simply removed the unconstitutional language. **Enacted and signed into law.**

HB 267, to require candidate to include party affiliation in election materials

Introduced by Representative Tom Kilpatrick, this bill would require that all communications financed by a candidate or a

candidate's committee in partisan elections must state the party affiliation of the candidate. **Passed the House; died in Senate on adoption of adverse committee report.**

HB 407, to expand definition of "candidate" and to require earlier campaign finance reporting

Introduced by Representative Kelly Addy at the request of the commissioner, this bill would expand the statutory definition of "candidate" for campaign finance reporting purposes. It would include an individual who solicits or receives contributions, who makes expenditures, or who authorizes someone else to do so on her or his behalf. The definition also would be expanded to include someone subject to a recall election. (The commissioner, in proposing the expanded definition of candidate, utilized language from the Model Law, a project of COGEL, discussed under the **OTHER ACTIVITIES** portion of this report.)

The bill also would require quarterly reports from statewide candidates and political committees supporting or opposing statewide referenda in the year or years prior to the year in which the candidate or issue is on the ballot.

The bill had the support of the various "good government" groups and Montana newspaper editors; no one opposed the bill. **Enacted and signed into law.**

HB 428, to abolish commissioner of political practices, to eliminate contributions limitations, and to provide for full disclosure of campaign receipts and expenditures

Introduced by Representative Tom Hannah, this bill would abolish the office of the commissioner and transfer its functions and duties to the secretary of state or, in some instances, to the attorney general.

The bill also would eliminate current limitations and reporting requirements by allowing any person or organization to contribute any amount to a candidate with only the name of the contributor to be reported.

The bill also would require new and more frequent reporting of campaign receipts and expenditures.

While some people testified that some features were laudatory, particularly more frequent campaign finance reporting, most people opposed the bill because it would abolish the independent office of commissioner and place the responsibilities with partisan elected officials and because it would eliminate all campaign contribution limits. **House adopted adverse committee report.**

HB 599, to expand upon the political criminal libel statute, to criminalize the code of fair campaign practices, and to expand code to include officers of political committees

Introduced by Representative Vivian Brooke at the request of Common Cause/Montana, this bill would expand upon the political criminal libel statute by prohibiting false statements against political committees and ballot issues in addition to candidates. The bill also would allow officers of political committees, in addition to candidates, to sign and subscribe voluntarily to the code of fair campaign practices and would attach a criminal penalty to violation of the code, which under current law carries no penalty. **Died in committee.**

HB 612, to revise definitions of "contribution" and "expenditure" to include in-kind, and to increase amounts individuals and committees may contribute to candidates

Introduced by Representative Fred Thomas (who had participated in the July 1987 meeting called by the commissioner to address the in-kind "loophole" problem; see FY '88 annual report), this bill would provide a definition for in-kind contributions and expenditures in the statute, effectively closing the perceived loophole in aggregate PAC contributions permitted to legislative candidates. The bill also would increase the amounts that both individuals and committees may contribute to candidates and the aggregate amounts permitted from PACs to legislative candidates.

Those supporting closing the in-kind loophole did not like the changes in contributions limitations; others would support closing the loophole only on condition that the limitations on contributions be raised. The bill foundered mainly on this clash. **Died in committee.**

HB 615, to clarify lobbying definitions, to change reporting dates, and to require lobbyists to report

Introducted by Representative Bob Raney at the request of the commissioner, this bill would clear up confusion and contradictions among lobbying terms in the law. It also would require more timely lobbying disclosure reports and would require that lobbyists, rather than their principals (employers), file periodic disclosure reports. The basis of the bill was a written report provided by the commissioner to the Legislative Finance Committee (see FY '88 annual report).

A draft of the bill had been circulated by the commissioner to a group of veteran lobbyists in advance of the legislature and had been revised based on their comments; however, the bill was strongly opposed by many other lobbyists. **Died in committee.**

HB 660, to allow filing of citizen's action for violation of campaign finance laws

Introduced by Representative Janet Moore at the request of Common Cause/Montana, this bill would permit a citizen who had filed a complaint with the commissioner to file a civil action in court in the name of the state if the commissioner or county attorney had not acted on a complaint within certain specified time periods. **House did not adopt favorable committee report.**

SB 291, to repeal the Public Campaign Fund

Introduced by Senator Bruce Crippen, this bill would repeal authority for a public campaign fund derived from the $1 check-off on income tax returns, in which half of the funds goes to gubernatorial nominees and half goes to supreme court nominees. **Senate did not adopt favorable committee report; rereferred to Judiciary Committee where it died.**

SB 336, to provide for actions to be taken for violating code of fair campaign practices

Introduced by Senator Gene Thayer, this bill would grant authority to the commissioner to issue cease and desist orders, after providing opportunity for hearing, to those who have violated the code or to go to court for restraining orders or injunctions for code violations. The bill also would permit officers of political committees, in addition to candidates, to subscribe voluntarily to the code and would provide a fine up to $500 for violating cease and desist orders. **Senate adopted adverse committee report.**

STAFF

Legislatively-approved, full-time-equivalent (FTE) staff for the office, including the commissioner's position, for fiscal year 1989 was 3.0. Legal counsel continued to be contracted either through Agency Legal Services in the Department of Justice or, when needed, through private outside counsel.

The commissioner was ably assisted throughout the year by Karen Crawford. And, as in the previous year, in an effort to spend state dollars wisely, two people were hired on a temporary basis to staff the second administrative assistant position as the workload demanded during the general election in the fall. Then, advertising and screening commenced for the position to be filled full time. Taffy Miller was offered and accepted the position in December, 1988, only to resign reluctantly just three weeks later because she was offered another job in state government (for which she thought she had been out of the running) at three grades higher. Cynthia Jeske then was employed

in the position only to resign, as well, after about four months to take a job in her chosen field, nursing.

A listing of all staff--including the commissioner--by position, grade level, and salary is provided below. A pay freeze kept salaries at the same levels as for the preceding biennium.

Name	Position	Grade	Salary
Dolores Colburg	commissioner	N/A	$27,656
Karen Crawford	admin. assistant III	11	$20,793
Melinda Artz	admin. assistant III	11[1]	$ 836
Cheryl Hutchinson	admin. assistant III	11[1]	$ 1,781
Cynthia Jeske	admin. assistant III	11	$ 5,163
Taffy Miller	admin. assistant III	11	$ 433

[1] Reflects temporary, part-time status.

Duties of Staff

Administrative Assistant III

Duties of this position, staffed by Karen Crawford who has been with the office since its establishment on July 1, 1975, are that generally of the office manager (e.g., payroll, ordering supplies, maintenance of files) plus answering routine mail and inquiries; performing receptionist duties; checking and cross-checking campaign finance reports; checking lobbying disclosure reports; compiling and summarizing campaign finance and lobbying data; registering lobbyists and their employers; entering their names on the official docket; performing computer data-entry tasks; and performing any other routine office duty.

Administrative Assistant III

Duties of this second position, when staffed in FY '89 only temporarily during the general election period, were to check all campaign finance reports filed by candidates and political committees; to note problems with reports; to call, as appropriate, treasurers to clear up problems or learn missing information; to draft letters for the commissioner about more serious problems with reports; and to perform any other duty associated with checking campaign finance reports.

When the position was advertised and filled (twice and for only short times), its duties were shifted to emphasize communication skills. In addition to several duties common to the position occupied by Karen Crawford, the re-designed focus

was on such research, writing, analysis, and editorial tasks as preparing draft responses to correspondence, drafting suggested legislation and supportive testimony, drafting news releases, providing critical review of commissioner's written work, reviewing and revising forms and manuals, and maintaining an annotative index of advisory opinions issued.

BUDGET

Expenditures

Set out below are the budgeted amounts for major categories of expenditures for fiscal year 1989 and the actual amounts expended for each object of expenditure. Only $620 in unexpended funds was reverted to the General Fund.

Commissioner of Political Practices
Fiscal Year 1989

Category	Budgeted	Expended	(Over) Under
PERSONAL SERVICES			
1100 Salaries	$ 61,353	$ 57,099	$ 4,254
1400 Employee Benefits	13,204	11,976	1,228
1600 Vacancy Savings	-587		-587
SUBTOTALS	$ 73,970	$ 69,075	$ 4,895
OPERATING EXPENSES			
2100 Contracted Services	$ 15,142	$ 14,942	$ 200
2200 Supplies & Materials	5,545	2,773	2,772
2300 Communications	3,500	3,826	(326)
2400 Travel	500	1,026	(526)
2500 Rent	4,160	4,701	(541)
2700 Repair & Maintenance	1,591	626	965
2800 Other Expenses	250	591	(341)
SUBTOTALS	$ 30,688	$ 28,485	$ 2,203
EQUIPMENT AND INTANGIBLE ASSETS			
3100 Equipment	-0-	5,657	(5,657)
3400 Intangible Assets	-0-	821	(821)
SUBTOTALS	-0-	$ 6,478	$ (6,478)
TOTAL PROGRAM	**$104,658**	**$104,038**	**$ 620**

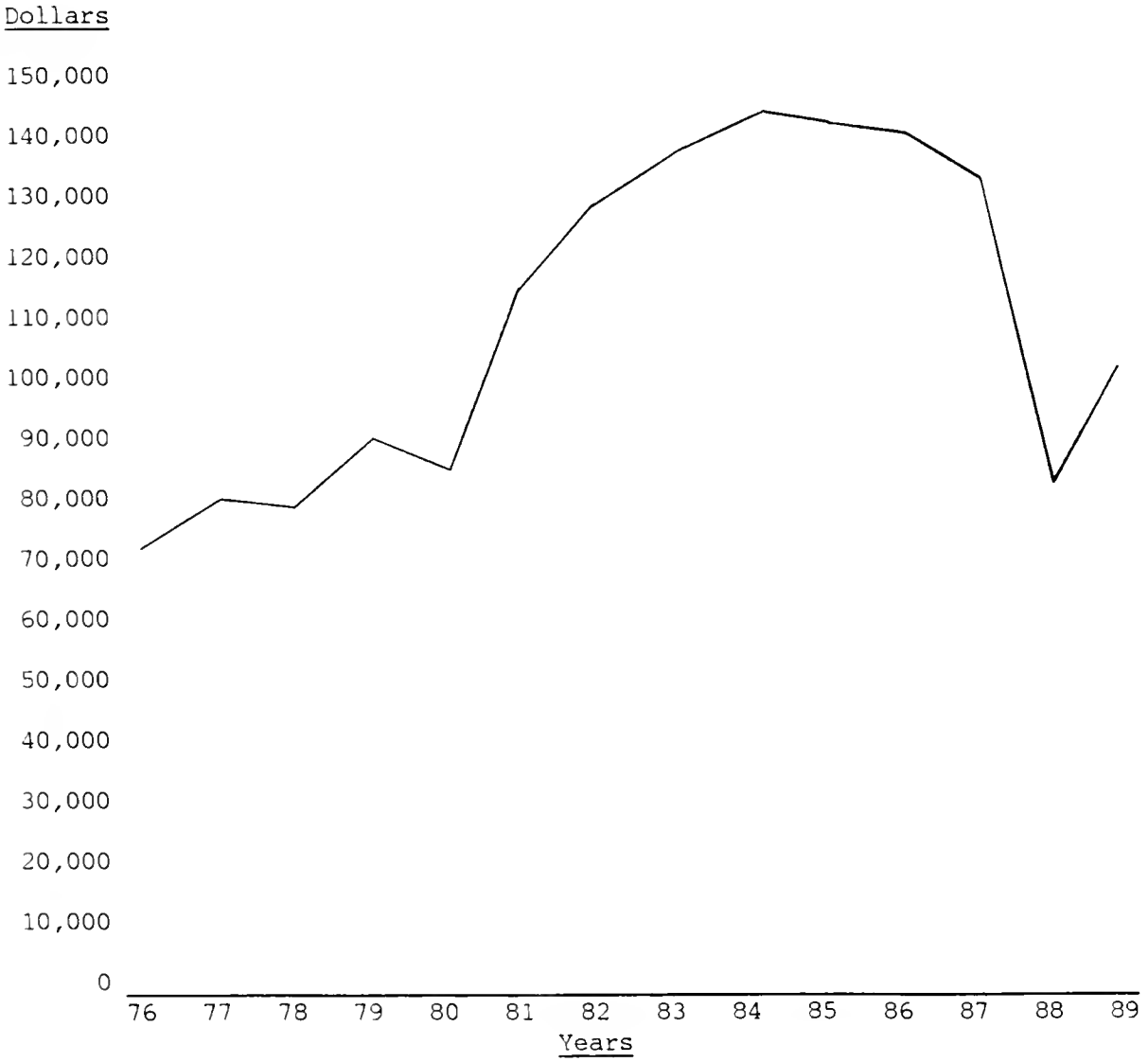
Contracted legal services amounted to $5,822 for the year, compared to $30,338 budgeted in FY 1987 to support the staff

attorney position that had been eliminated in FY '87. Equipment expenditures were for a third computer system, a printer, computer work stations, and software.

The graph below shows the total of expenditures for the office for the past 14 fiscal years beginning with FY 1976 (the year the office was established) through June 30, 1989. That period embraces the complete terms of the first two commissioners--John S. Hanson (July 1, 1975, through December 31, 1980) and L. Margaret Krivec (January 1, 1981, through December 31, 1986)--and the first two and a half years of Commissioner Colburg's term.

Commissioner of Political Practices

Expenditures from FY 1976 through FY 1989



Revenue

Photocopying fees

A total of $1,113 in photocopying fees, at the statutory rate of ten cents per page, was collected during the fiscal year. These funds, along with money from the sales of campaign finance books, were deposited into a special revenue account and then were available for photocopy machine supplies and to apply toward machine rental and printing costs.

Campaign finance book

The 1987 legislature, as part of the appropriation language for the office, allowed a charge for the campaign finance book except for libraries. Previously, the book had been distributed to interested parties free of charge.

The book for the 1988 election cycle numbered 664 pages and was printed just before the end of the fiscal year. The cost for printing 225 copies was $4,500 or $20 per copy, the price set for purchasers. Revenue of $1,420 from the sale of 71 books was collected in FY '89 and deposited to a special revenue account.

Lobbyist license fees

A total of $4,450 was collected in lobbyist license fees at the statutory rate of $10 per lobbyist. State employees who register as lobbyists for their agencies are exempted from paying the license fee.

II. SUMMARY OF REPORT INFORMATION

CAMPAIGN FINANCE

Because the 1988 elections included Presidential and all Montana statewide elective offices, with many statewide seats being open, more campaign finance reports were filed than during the 1986 election cycle.

Campaign finance reports for the general election period for 22 candidates for statewide executive branch offices, 2 supreme court justice candidates, 2 supreme court clerk candidates, 45 district judge candidates, 3 public service commission candidates, and 263 legislative candidates were filed with the office and were checked as required by statute. A total of 182 county and local candidates who received or spent $500 or more also were required to file campaign finance reports.

Campaign finance reports for 10 statewide ballot issue committees, 134 party committees, and 122 political action committees (PACs) also were filed with the office and also were checked and cross-checked with candidates' reports as the law requires.

In all, a total of 519 candidates and 266 committees filed 1,650 reports--totaling more than 16,000 pages of campaign finance activity--during the general election period.

As indicated in the **MAJOR ACCOMPLISHMENTS** section of this report, a compilation of the receipts and expenditures of state district and statewide candidates and statewide ballot issue committees was published in the spring of 1989 for the entire 1988 election cycle. Set out below, however, are some summary data from campaign finance reports for the 1988 elections.

Summary of 1988 Campaign Finance Data for Candidates

Candidates	Contributions from Individuals	Contributions from PACs	Total Received[1]	Total Spent
Attorney General	$ 298,646	$ 9,649	$ 337,191	$ 323,258
Auditor	12,549	3,750	19,022	15,176
Governor	2,305,946	108,260	2,749,972	2,728,232
Secretary of State	94,878	8,850	144,123	143,814
Supt. of Pub. Instr.	96,221	16,623	174,228	172,267
Supreme Court Justice	16,425	100	19,171	19,171
Supreme Court Clerk	20,957	1,350	35,199	35,199
District Judge	130,096	650	192,159	188,890
PSC	19,233	3,050	32,829	37,369
Senate	150,041	38,545	244,831	232,103
House	349,581	77,701	554,938	519,710
TOTALS	**$3,494,573**	**$268,528**	**$4,503,663**	**$4,415,189**

[1] This column also includes candidates' own contributions to their campaigns, contributions from political party committees, "pass-the-hat" type fund raisers, and interest earned on campaign accounts.

A few legislative candidates neither received nor spent any money at all on their campaigns. Among legislative candidates who did receive and spend money, in terms of money spent, the "least expensive" House and Senate races were $43 and $8 respectively; the "most expensive" House and Senate races were $12,276 and $13,058 respectively. Inclusive of all legislative candidates, the average spent for a House seat was $2,497 and the average spent for a Senate seat was $4,280.

Individuals accounted for 62 percent of contributions to House candidates, and PACs accounted for 14 percent. For Senate candidates, individuals contributed 61 percent, and PACs contributed 15 percent. (See footnote on table above for other sources.)

LOBBYING

A total of 690 lobbyists registered with the office to represent 383 principals (employers of lobbyists). Of that number, 234 lobbyists represented 32 state agencies. As required by law, lists of registered lobbyists and their principals were provided to the legislature on the first Tuesday of each month during the 1989 regular session.

The office continued the practice begun in 1987 of providing lists to legislators in two formats: one alphabetical by lobbyist and one alphabetical by principal.

Reported total lobbying expenditures for the regular 1989 legislative session were $2,445,627. The top 20 lobbying expenditures by principals are listed below.

Top 20 Lobbying Expenditures
1989 Legislature

Name of Principal	Amount Reported
Underfunded Schools Steering Committee	$ 54,883
Governor's Office	51,200
Burlington Northern Railroad	47,687
Montana Coin Machine Operators Association	44,900
Montana Power Company	38,057
Montana Medical Association	37,666
Montana Trial Lawyers Association	36,062
Burlington Resources	33,341
Montana Independent Bankers	33,272
Montana Tavern Association	33,085
American Insurance Association	31,397
Montana Bankers Association	29,527
Health Insurance Association of America	27,731
Montana Education Association	27,552
Montana Hospital Association	26,309
Montana Ambassadors	24,840
Montana State AFL-CIO	24,720
Norwest Banks of Montana	24,632
Pacific Power and Light Company	23,820
Shell Western E&P, Inc.	22,564
TOTAL	**$673,245**

The vast number of lobbying reports were due no later than 60 days following adjournment of the session (that is, by June 20, 1989). As of that date, a total of 55 principals had not reported, which represented about 1 in 7 principals delinquent in filing required reports. Short of going to court, no enforcement tools are available to force compliance with lobbying report laws or to impose penalties for being late.

BUSINESS DISCLOSURE

As part of the initiative approved by the voters in 1980 to create lobbying disclosure laws, one provision requires that elected officials and officials-elect must file a business disclosure statement with the commissioner each even-numbered year. The provision applies to those elected to or currently holding state district or higher offices. The reports were due no later than December 15, 1988, and all officials complied.

The disclosure does not ask that monetary values be reported for all assets and interest; rather, the law and rules simply require a description or name and address of the business interest or asset if it is $1,000 or more in value.

III. ACTIONS

COMPLAINTS

A great number of people registered complaints with the office during the summer and fall of 1988. Most were informal, by way of telephone calls. Mainly, as with any election year, they had to do with assertions of improper posting or lack of attribution on campaign materials (commonly referred to as the "disclaimer"), electioneering on election day, candidates' campaigning in public work places, and other allegedly improper campaign conduct.

Virtually none of those callers wanted to file written complaints; indeed, most preferred to remain anonymous. In nearly all cases, though, enough information was gained so that the alleged offender was identified. The most successful procedure for handling such oral complaints was for the commissioner or staff to be in touch--usually immediately, by telephone--with alleged offenders to learn if the assertions were true and, if so, to suggest ways to remedy problems. In many cases, of course, assertions of wrongdoing were found to be baseless or quite muddled.

In addition to the hundreds of callers, the office received numerous written complaints during the first half of the fiscal

year. Of course, this was the time leading up to the November 1988 general election. Karen Crawford, the only one with "institutional memory" having been with the office since its inception in 1975, said that she could not remember a busier time (except, perhaps, as a brand-new agency when forms, a manual and rules had to be developed and initial challenges to the authority of the office had to be met). A review of office files indicates that more written complaints--a total of 22-- were filed than had been the case for all of the previous years combined, not counting the anonymous complaints on CI-27 in FY 87.

With the exception of the first incident described below, the nature and disposition of all written complaints are summarized in the following pages.

BILLINGS GAZETTE editorial on election day

One example of alleged electioneering on election day generated an incredible number of calls. The telephone was ringing as the office door was opened at 7:30 a.m. on election day. It proved to be one of more than a hundred people who called that day to complain about an editorial in the election-day issue of the Billings Gazette repeating the paper's earlier endorsements of candidates. The editorial took the form of a sample ballot with a large X before the newspaper's choices.

Callers were irate because they believed the editorial constituted an advertisement on election day in violation of section 13-35-233, MCA, prohibiting placement of advertisements or otherwise soliciting support for or opposition to a candidate or ballot issue. None was mollified to learn that the Gazette editorial did not violate the statute because of the First Amendment freedom of press right and because the editorial was simply opinion.

Bottle Bill Complaints

A series of complaints surrounding the so-called "bottle bill," a statewide initiative (I-113) to require a deposit on beverage containers, hit the office during the summer and fall. Committees organized in support of and in opposition to I-113--or the chief spokespersons for committees for and against I-113--lodged complaints against each other. In all, eight "bottle bill" complaints were filed with the commissioner. A brief discussion of each is provided below with the following abbreviations being used for the respective committees:

Committees Opposed to I-113

MVR	Montanans for Voluntary Recycling (later CAFD)
CAFD	Committee Against Forced Deposits; also, Committee Against Forced Deposits: Montana Grocers, Recyclers, Soft Drink Bottlers, Beer Distributors, Container Manufacturers and Their National Affiliates, and Other Montana Businesses and Concerned Citizens (formerly MVR)

Committees in Support of I-113

MLCR	Montanans for Litter Control and Recycling
MontPIRG	Montana Public Interest Research Group
MontPIRG-LCRA	Montana Public Interest Research Group Committee for the Litter Control and Recycling Act

MLCR Against MVR

Jonathan Motl, treasurer for MLCR, in a letter dated July 8, 1988, alleged that MVR had failed to register (i.e., file its certification of committee treasurer and bank depository) with the commissioner as a political committee within five days of having made an expenditure against I-113, in violation of section 13-37-201, MCA. Motl cited newspaper accounts and activities of Sage Advertising to buttress his allegations that a number of expenditures had occurred over time by a group of people working against I-113 and that the group (MVR) still had not registered as a political committee as of the date of his complaint letter.

MVR registered with the commissioner on July 8, 1988, the same day Motl filed the complaint against MVR. A later investigation into Motl's allegations proved, however, that a group of people was meeting as early as March 1988 and had agreed on Sage Advertising as the firm to engage for purposes of opposing I-113. Also, expenditures made by the Montana Beer and Wine Wholesalers for a survey for MVR occurred in March; and, compensated time had been spent by attorneys Roger Tippy, Mona Jamison and Steve Browning in conjunction with MVR well before the committee filed its statement.

According to notice provided to the commissioner, the secretary of state had approved the petition for I-113 on May 13, 1988, which made it a ballot issue for campaign finance reporting

purposes on that date. MVR was under the mistaken notions that: first, I-113 would not be a ballot issue until the requisite number of signatures was gathered on the petition; and, second, the earlier expenditures were not clearly and expressly on behalf of the effort against I-113 since it did not yet exist.

Based on the facts and findings, it was concluded that MVR had not filed its certification of committee treasurer and campaign depository in timely manner; therefore, as the law requires, the commissioner sent the matter to the Lewis and Clark County Attorney for prosecution on September 7, 1988.

County Attorney Mike McGrath, while stating that his own investigation supported the commissioner's finding that MVR was negligent, declined to prosecute the matter because he did not believe the negligence posed a ". . . substantial risk of undermining the election process and [did] not rise to the level of a prosecutable criminal action." Further, he declined to initiate a civil action, saying that the main function of the county attorney is to serve as legal advisor to various county offices and to prosecute criminal matters and that his office did not have the resources to ". . . undertake this type of case."

The matter, therefore, automatically reverted to the commissioner, who then could prosecute the matter in the name of the state. She then decided not to pursue the issue for several reasons: general concurrence with the county attorney's judgment that MRV's negligence did not substantially undermine the election process; MVR had registered two days after the date it thought that I-113 became a ballot issue (on July 6, 1988, when it actually qualified for the ballot); and, finally, the notice from the secretary of state that the petition for I-113 had been approved on May 13 was in error (it actually was approved on April 26, 1988).

MLCR Against the Montana Beer and Wine Wholesalers

Ten days after MLCR's first written complaint, Motl on July 18, 1988, alleged that the Montana Beer and Wine Wholesalers should register as a political committee and be fined for any expenditures made before such registration. The basis for Motl's complaint was that Roger Tippy, as a representative for the Beer and Wine Wholesalers, had performed paid work against I-113 during the drafting stage of the initiative petition. Motl's letter also requested that attorneys Tippy, Mona Jamison and Steve Browning report any compensated time spent on I-113.

The matters in this complaint were laid to rest in the resolution of MLCR's July 8, 1988, complaint against MVR summarized above. As indicated, it was determined that expenditures made from March onward (until MVR filed with the commissioner) needed to be reported by the committee. After the

ruling on the July 8 complaint, the Montana Beer and Wine Wholesalers were requested to file a report with the commissioner as an incidental committee and did so.

As to Motl's request that the attorneys "be placed on notice," in conversations with the commissioner during the investigation of the first complaint and in conjunction with other complaints discussed below, Tippy, Jamison and Browning were fully aware that they must report to MVR the compensated time as in-kind contributions and did so.

Roger Tippy Against MLCR

In a letter dated July 26, 1988, Tippy complained that a committee in support of I-113, Montanans for Litter Control and Recycling, had chosen a name that failed to identify clearly ". . . the economic or other special interest, if identifiable, of a majority of its contributors . . ." as section 13-37-210, MCA, requires. Tippy contended that the committee also was misleading in that people who run recycling centers ". . . are overwhelmingly opposed to I-113."

A review of the campaign records for MLCR showed that no discernible economic or other special interest could be found among MLCR contributors. The greatest amount of money had been contributed by individual Montanans of varying backgrounds. No violation of the statute, therefore, was found.

MLCR Against MVR

In a letter dated August 16, 1988, Motl again on behalf of MLCR complained that MVR was not keeping its accounts current within 10 days of receiving contributions or making expenditures, a violation of section 13-37-208, MCA. Motl alleged that his or a designate's weekly inspection of MVR's records showed that MVR had failed to record expenses of an in-kind nature.

The matters in this complaint were laid to rest in the resolution of the July 8 complaint against MVR summarized on pages 17-18. On completion of the investigation of that first complaint, the commissioner determined in facts and findings dated September 7, 1988, that a number of early contributions or expenditures by various people and entities on behalf of MVR and in opposition to I-113 must be recorded and reported. MVR promptly did so, as verified by the commissioner and also as verified by MLCR's inspection of MVR records on September 7 and 19, 1988. (See also discussion of counter complaint, MontPIRG against CAFD, filed on October 27, 1988.)

Common Cause Against CAFD

C. B. Pearson, executive director of Common Cause/Montana, on behalf of that organization, in a letter dated September 8, 1988, complained that a committee opposed to I-113, Committee Against Forced Deposits (formerly MVR), ". . . had not named itself properly as defined by Montana's naming and labeling law." Section 13-37-210(1)(a)(i), MCA, requires that a committee name itself by identifying clearly "the economic or other special interest, if identifiable, of a majority of its contributors." Pearson alleged that the beverage and container industries were major contributors, yet the name CAFD did not so reveal.

An investigation by the commissioner into the matter between September 8 and 14, 1988, showed that the major contributors to the committee to date were beverage-industry related. Further, the projected budget for the committee showed that beverage and container industries would be expected to provide over 90 percent of the funding for CAFD.

Based on the facts and findings, the commissioner concluded that CAFD was in violation of section 13-37-210, MCA. An order of noncompliance was issued on September 16, 1988, to Frank Capps, treasurer of CAFD, stating that the committee was not in compliance with the law and giving CAFD five days after receipt of the order to re-name itself else civil action would be taken.

On September 16, 1988, an amended certification and statement of organization was filed with the commissioner showing that the committee had re-named itself Committee Against Forced Deposits: Montana Grocers, Recyclers, Soft Drink Bottlers, Beer Distributors, Container Manufacturers and Their National Affiliates, and Other Montana Businesses and Concerned Citizens. The new name was accepted by the commissioner as being in compliance with the law.

CAFD Against MontPIRG-LCRA

Capps, treasurer of the Committee Against Forced Deposits, in a letter dated September 13, 1988, complained that MontPIRG-LCRA, a committee supporting I-113, had failed to file its certification and statement of organization within five days of making an expenditure and, therefore, was in violation of section 13-37-201, MCA. Further, Capps complained that MontPIRG-LCRA had not filed its September 10 campaign finance report in full compliance with the law.

MontPIRG-LCRA filed its certification and statement of organization with the commissioner on May 26, 1988. An investigation into the complaint showed that the committee had made expenditures supporting I-113 well before that date.

Based on the facts and findings, it was concluded that MontPIRG-LCRA had not registered in timely manner; therefore, as the law requires, on October 5, 1988, the commissioner sent the matter to Lewis and Clark County Attorney for prosecution. Neither County Attorney McGrath nor Commissioner Colburg chose to prosecute the matter for much the same reasons as are stated in the summary discussion of the July 8 MLCR Against MVR complaint (see pages 17-18 of this report).

CAFD Against MontPIRG and MontPIRG-LCRA

In a complaint dated October 20, 1988, three steering committee members of the Committee Against Forced Deposits: Montana Grocers, et al-- Doug Stewart, R. Stephen Browning and Roger Tippy--alleged that both MontPIRG and MontPIRG-LCRA had violated section 13-37-217, MCA, which prohibits making or receiving a contribution in other than the true name of the contributor. CAFD alleged that MontPIRG canvassers, going door to door in Montana communities, had collected money specifically donated just for support of I-113; but, that money allegedly ended up in MontPIRG's account and, thus, the true donors were not disclosed in MontPIRG-LCRA's reports.

An investigation into the matter showed that MontPIRG was canvassing citizens to support various issues; those who chose to contribute to MontPIRG signed a form stating that they supported efforts in several public interest areas. Those citizens who stated that they wished to make a contribution solely to support I-113 were told to make their checks payable to "MontPIRG-LCRA." Based on the facts and findings, it was concluded that no violation of section 13-37-217, MCA, had occurred.

MontPIRG Against CAFD

Jonathan Motl, attorney for MontPIRG (not as MLCR treasurer as previously cited), on October 27, 1988, filed both a response to the October 20 complaint of CAFD against MontPIRG and a counter complaint against CAFD. The counter complaint alleged that CAFD was late in recording and reporting ". . . in-kind expenses of over 20 separately listed in-kind contributors, including Coca-Cola of Atlanta, and Adolph Coors Company. . . ." Motl also alleged that Montana Recycling, Inc. and Thriftway Stores had performed in-kind services going back as far as January and May respectively and that, by his inspection, these in-kind contributions/expenditures to CAFD had appeared on CAFD records sometime between September 7 and 19, 1988. (See page 19.)

Twelfth Judicial District Complaints

In addition to the above "bottle bill" controversies, a number of complaints were filed surrounding the contest for an

open district judge seat in the Twelfth Judicial District, Havre. The actions on behalf of the two opponents--Morton B. Goldstein and John Warner--are summarized below.

David Rice Against Morton Goldstein

David Rice, an attorney in Havre, complained in a letter dated August 25, 1988, that district judge candidate Morton Goldstein had misrepresented facts on such issues as plea bargaining, special prosecutors and campaign contributions from lawyers in his election materials and had generally vilified or defamed the character of his opponent, John Warner. Rice asserted that these alleged activities constituted violation of the political criminal libel statute, section 13-35-234, MCA. John D. Morrison, also an attorney in Havre, joined Rice in his complaint.

After reviewing the materials supplied by Rice, the commissioner concluded that the political criminal libel statute had not been violated. The code of fair campaign practices, which Goldstein voluntarily had signed, was violated; however, such violation carries no penalty. A person is on one's honor to abide by the provisions of the code; the commissioner wrote to Goldstein so stating and urged that he conduct his campaign in keeping with the spirit of the code.

Morton Goldstein Against John Warner

Goldstein, a candidate as previously stated and also an attorney in Havre, wrote on August 26, 1988, to complain that his opponent, Warner, had been receiving "what appears to be" in-kind contributions from lawyers that had not been reported and monetary contributions from spouses of attorneys that Goldstein thought questionable.

Goldstein provided no evidence for his allegations; nor did he name the lawyers who supposedly had made in-kind contributions to Warner. Further, he was advised that contributions by attorneys' spouses to any candidates of their choosing is perfectly legal. The commissioner advised him the complaint was dismissed, as the rule for filing complaints requires, unless and until he could provide names of alleged violators and specific information. He failed to do so.

Morton Goldstein Against John Warner

Goldstein in another letter dated September 8, 1988, lodged several complaints against Warner. One, he alleged that activities of public employees might be in violation of the statute that prohibits public employees from soliciting support for or opposition to a candidate while on the job (Section 13-35-226(3), MCA). Two, Goldstein alleged that his opponent's

materials stated that Warner had the support of courthouse officials, contrary to what Goldstein had been told. Three, Goldstein alleged that Warner's position as city attorney could be viewed as one to intimidate city employees into supporting him for district judge. And, four, Goldstein alleged that the endorsement of Warner by a supervisor of law enforcement officers would intimidate those officers into supporting Warner, as well.

As with his previous letter of complaint, Goldstein was advised that, in the main, he provided nothing to substantiate his allegations. He was advised to provide specific instances, with some verification, to support his charges of either illegal public employee solicitation while on the job or coercive behavior on the part of other public officials to gain their subordinates' support of Warner.

An examination of the Warner materials supplied by Goldstein stating that Warner had the support of courthouse officials proved to be overstated. At most, it constituted a violation of the code of fair campaign practices, which Warner had signed, that carries no penalty for violation. The commissioner wrote to Warner advising that he should conduct his campaign in keeping with the spirit of the code he had signed.

David Rice Against Morton Goldstein

Rice, in another letter dated September 27, 1988, complained that Goldstein had violated section 13-35-234, MCA, the political criminal libel statute, in a newspaper advertisement that had appeared in the Havre Daily News on September 16, 1988. The advertisement, a copy of which Rice provided with his letter, stated in pertinent part as follows:

> Mort Goldstein questions why the husband of our Hill County Clerk of Court gets a bailiff job at the taxpayers' expense in the Courtroom where his wife is the Chief Clerk and she is already drawing a County payroll check.

On reading the advertisement, one could infer that Goldstein is implying or suggesting that the husband obtained his job through nepotism, which is not a part of the political criminal libel statute. That statute does prohibit, however, the making or publishing of a ". . . false statement or charge reflecting on any candidate's character or morality." The advertisement, however, did not contain a false statement; therefore, no violation of section 13-35-234, MCA, was found.

Morton Goldstein Against David Rice

Goldstein--in a letter dated October 19, 1988, addressed to the commissioner, the attorney general and the Hill County

commissioners--complained that Rice had placed Warner campaign literature and a sign in the front window of his office in violation of section 13-35-226(3), MCA. That statute prohibits public employees from soliciting support for or opposition to a candidate while on the job.

The building in question proved to be one in which Rice maintains his private law practice, the rent for which is paid by him, not by Hill County taxpayers as Goldstein alleged. Further, the sign in question was in the entry way of the building, not in Rice's office. No violation was found.

Senate District 19 Complaints

In Senate District 19, incumbent Senator Gene Thayer of Great Falls was seeking re-election; his opponent in the general election was Ed Dolezal. That contest generated a series of late-in-the-campaign complaints, as follows.

Gene Thayer Against Ed Dolezal

In a letter dated October 31, 1988, Thayer complained that Dolezal had distributed ". . . a flyer containing a flagrant lie and other distortions of my voting record." At issue was Dolezal's statement about Thayer's stance on "equal pay for equal work."

A review of the voting record of Senator Thayer proved that he had not voted against equal pay, as Dolezal asserted, but against a bill (SB 169) that would have repealed the statute that requires the state to ". . . work toward the goal of establishing a standard of equal pay for comparable worth." Dolezal, when questioned, indicated that he felt his flier really did not misstate the issue in saying that "Gene Thayer voted to **abolish** a law requiring equal pay for our working women."

Dolezal's flier appeared to be an over-simplification of the issue; however, it did not translate into a violation of the political criminal libel statute, section 13-35-234, MCA. It was found to violate the code of fair campaign practices, which Dolezal had signed but for which there is no penalty; nonetheless, the commissioner telephoned Dolezal's home on November 5 and left the message with Dolezal's wife that he stop any further distribution of the offending flier. She indicated that already had occurred.

Ed Dolezal Against Gene Thayer

Dolezal, in a letter dated November 6, 1988, hand delivered to the commissioner at 7:50 a.m. on that date, complained that Thayer, in two fliers, had distorted the ruling from the commissioner the day before (see above) and had misrepresented

Dolezal's stance on equal pay for equal work by saying "Dolezal apparently supports doing away with the state personnel plan which now guarantees equal pay for equal work."

On examination, one Thayer flier did misrepresent the ruling of the commissioner with respect to the flier Dolezal had been ordered to cease circulating. The commissioner, therefore, telephoned Thayer on November 6 and told him to discontinue circulating that particular flier.

As to the second issue, it was found that Thayer's flier did misrepresent Dolezal's position; however, it did not violate the political criminal libel statute. At most, it was a violation of the code of fair campaign practices, which Thayer had signed but for which there is no penalty.

Gene Thayer Against Ed Dolezal

In a letter sent by teletransmission to the governor's office on Monday, November 7, 1988, the day before the general election, Thayer complained that Dolezal had circulated yet another flier that misrepresented Thayer's position surrounding the issue of equal pay for equal work.

While Dolezal's new flier stated accurately that SB 169 would have repealed the statute setting the goal of equal pay for comparable worth (a bill that Thayer supported), the flier again translated that as Thayer's voting ". . . to repeal a law that guaranteed equal pay for equal work for women." That again was a misrepresentation; but, as before, it was at worst a violation of the code of fair campaign practices.

Other Complaints

Norm Wallin Against Jenny Younger

Representative Norm Wallin, a candidate for re-election in House District 78, in a letter dated November 4, 1988, filed a complaint against his opponent, Jenny Younger. Wallin contended that Younger had taken a quote of his from the July 3, 1986, Bozeman Daily Chronicle (which he did not dispute as to accuracy) and used it out of context to mispresent Wallin's stance on funding for Montana State University.

A review of both the Chronicle article and Younger's campaign piece, which was a letter addressed to MSU students, indicated that Younger's interpretation of Wallin's quote two years prior was not unreasonable, given that the newspaper article was focused on the university and that a special session of the legislature in June 1986 had cut the budget of MSU. At the same time, Wallin maintained that the statement in question

had been made in conjunction with a gasoline tax increase, not MSU funding.

The commissioner concluded that Younger had not distorted the facts as she knew them; therefore, no violation of campaign practice law was found.

Royer Warren Against Robert Landon

Royer G. Warren of Lakeside, in a letter dated November 1, 1988, complained that Colonel Robert W. Landon, Chief of the Montana Highway Patrol, had written letters in opposition to Initiative 110 (I-110), a measure to repeal the Montana Seatbelt Use Law, in violation of section 13-35-226(3), MCA. That statute prohibits public employees from soliciting support for or opposition to a ballot issue while on the job.

Warren contended that Landon's use of his title in signing the letters showed that he was voicing his political views as an official of the state and that he is on duty 24 hours a day; thus, he was campaigning while on the job.

The facts uncovered through an investigation showed that Landon used neither state time nor money in writing his letters in opposition to I-110. Further, he consulted with his supervisor, Attorney General Mike Greely, before engaging in this activity so as not to be in violation of section 13-35-226(3), MCA. The assertion that Landon was on duty 24 hours a day is simply not the case; nor is it improper for a person to identify oneself by one's job title. The commissioner concluded that no violation of the statute had occurred.

Robert Lee Against Dan Magone

Robert J. Lee of Bigfork, in a letter dated November 9, 1988, complained that Dan Magone, Missoula County Sheriff, told a television audience that he opposed the repeal of the Montana Seat Belt Law and that he did so while ". . . in uniform and at his place of employment and on duty," all in violation of section 13-35-226(3), MCA. As noted in the Warren complaint above, that statute prohibits public employees from soliciting support for or opposition to a ballot issue while on the job.

As the facts showed, Sheriff Magone did appear at a news conference in city council chambers at 11 or 11:30 a.m. on October 28, 1988. He was in uniform and, in response to a question, he related some of his personal experiences with seatbelts. Also, as a video tape clip showed, at no time did Magone expressly urge a "no" vote on I-110.

Putting aside the fact that Magone was an elected official and, therefore, probably not a public employee within the meaning

of section 13-35-226(3), MCA, the facts showed that Magone was expressing a personal opinion about seatbelt use. The last sentence of section 13-35-226(3), MCA, reads as follows: "However, nothing in this section is intended to restrict the right of a public employee to express his personal political views." Obviously, in enacting this statute, the legislature recognized the First Amendment freedom of speech rights of public employees.

Based on the facts and findings, the commissioner concluded that Sheriff Dan Magone had not violated the statute.

Bob Williams Against Greg Hagenston

Senator Bob Williams, a candidate for re-election in Senate District 15, in an undated letter received on November 14, 1988, asked the commissioner to look into a letter that Greg Hagenston, president of the Montana Citizens for Right to Work, had mailed to the organization's membership. Williams thought it might be in violation of campaign practice law.

A review of the letter indicated that it asked the reader to lobby Williams about right to work and to thank W. G. Rafter, Williams's opponent, for his stance on the issue. The commissioner, therefore, found no violation.

Joseph Wurz Against Isaac Wurz

Joseph Wurz, a candidate for re-election for trustee in School District 31, Pondera County, in a letter dated March 21, 1989, hand delivered to the commissioner's office on that date, lodged a complaint against Isaac Wurz, leader and minister of the New Miami Hutterite Colony. Joseph Wurz alleged that Isaac Wurz had stated to colony members during a church service on February 26, 1989, that they would be punished by the church if they voted for Joseph Wurz at the school election on April 4 and that they must vote for Isaac Wurz. Joseph Wurz, who had himself not attended the church service in question, provided with his complaint notarized affidavits of three colony members who were in attendance and who attested to the statements by Isaac Wurz. The alleged behavior would be a violation of section 13-35-218(1), MCA, a criminal statute, which prohibits such coercion.

To investigate the matter, the commissioner made an on-site visit on March 30, 1989, to interview the various principals involved. Isaac Wurz, when questioned, admitted that he had instructed colony members not to vote for Joseph Wurz on pain of being punished by the church and to vote for Isaac Wurz. It was explained to him that such admonishment is a violation of state law and basic civil liberties of United States citizens. He asked what he might do to correct the matter. Finally, through agreement with Joseph Wurz, Isaac Wurz said that he would

apologize to colony members at church services that evening, telling them that it was wrong for him to have told them how they should vote; additionally, he would tell members that they could vote for whomever they wished.

Joseph Wurz wrote a letter dated March 31, 1989, stating that Isaac Wurz had done as he had promised; therefore, Joseph Wurz asked that his complaint be dropped. The commissioner then dismissed the complaint and so advised both Joseph and Isaac Wurz.

Montana Democratic Party Against the American Freedom Coalition of Montana and Montanans for Traditional Values

Gail Stoltz, executive director of the Montana Democratic Party and on its behalf, in a letter dated October 31, 1988, complained that two groups--the American Freedom Coalition (AFC) and Montanans for Traditional Values (MTV)--were supporting various Republican candidates in the state ". . . without being filed as registered political action committees pursuant to section 13-37-201, MCA." With her letter, Stoltz filed pieces of literature that allegedly had been circulated by the named groups.

The documents filed with the complaint letter included an AFC/Montana survey form apparently directed to candidates of both parties to complete, a subsequent "score card" based on responses to the survey and distributed by both AFC/Montana and MTV, and an AFC publication titled Voters 88 Guide that compared and ranked Presidential and Congressional candidates by its standards. An examination of the documents revealed that, while slanted in view (conservative in tone), they included no solicitations in support for or in opposition to any candidates. The commissioner found, therefore, that under Montana law the groups would not be required to register.

COURT ACTIONS

National Broadcasting Company, Inc., v. Dolores Colburg and Michael Greely. Cause No. CV 88-44-H-CLL

The National Broadcasting Company, Inc., (NBC) had filed a suit in the United States District Court, Helena, on May 19, 1988, challenging the language in section 13-35-211, MCA, that prohibits a person from asking voters within 200 feet of a polling place how they intend and how they already have voted. Pending resolution of its suit, NBC also had filed a motion for a preliminary injunction to prevent defendants and their agents from enforcing the prohibition in the statute. The court handed down such an order on June 2, 1988. (See page 14 of FY '88 report for commissioner's action.)

In an answer to NBC's suit, defendants Colburg and Greely, for the State of Montana, on August 11, 1988, admitted that the 200 feet provision in section 13-35-211(3), MCA, is constitutionally invalid and asked the court to sever the unconstitutional language but to uphold the remainder of the statute. United States District Judge Charles Lovell so ordered on November 3, 1988. At the commissioner's request, a bill subsequently was introduced during the 1989 session of the legislature to delete the unconstitutional language. (See **LEGISLATIVE ACTIVITY** section of this report.)

Royer Warren v. State of Montana. Cause No. DV-88-3748

On July 7, 1988, Royer G. Warren of Lakeside filed a complaint in the district court of the Eleventh Judicial District, Flathead County, challenging the removal of his name as an independent candidate for election in House District 4 from the general election ballot. As discussed in the commissioner's report for the previous fiscal year, Warren's name was removed from the ballot by acting Secretary of State David Good at the request of the commissioner in accordance with section 13-37-126, MCA. That action was taken because Warren had failed to file the certification (state form C-1) of his campaign treasurer and campaign depository as required under sections 13-37-201 and 205, MCA, and despite repeated entreaties to do so.

In his action filed with the court, Warren argued as follows:

> (1) The information requested on Form C-1 by the Commissioner of Political Practices was, in fact, an invasion of individual privacy in all respects, and (2) that a compelling STATE interest is absent in the search for information in this instance. [Emphasis his.]

The state, in a motion for summary judgment, argued that the statutes requiring the filing of a document by Warren to disclose his campaign treasurer and designating a campaign depository are not an unconstitutional invasion of his privacy and that the secretary of state and the commissioner had performed their statutory duties properly in refusing to print Warren's name on the official ballot for the November 4, 1988, general election ballot.

In a memorandum and order handed down on October 28, 1988, the court found that Warren's assertion of a privacy interest was not legitimate and that his ". . . failure to abide by the reporting statutes mandated his removal as an independent candidate." The court, therefore, granted the state's motion for summary judgment.

ADVISORY OPINIONS

As is the case with complaints, many people called the office during the election season with questions about the meanings and interpretations of campaign finance and practice statutes. Most of these inquiries were easily answered at the time; some, however, required a written request to know specifically what the person wished to be addressed in an advisory opinion. Such written requests that received written responses are summarized below.

Candidate for public office may endorse other candidates, AO 1988-2

District Judge M. James Sorte of Wolf Point asked whether any statutes or rules prohibited ". . . a candidate for public office from endorsing another candidate for public office." Judge Sorte indicated that his own research failed to find any such prohibition.

The commissioner not only confirmed the judge's finding, but she also pointed out that it was quite common for candidates to endorse one another in elections.

Placing campaign materials on doorsteps for discovery on election day prohibited, AO 1988-4

Mark D. Parker, on behalf of the Yellowstone County Republican Central Committee, asked the following question:

> Is the placing of campaign literature on a voters [sic] doorstep on the election eve, with the view towards having the material discovered by the voter in the morning, a violation of the statute?

The ruling statute, section 13-35-233(1), MCA, provides in pertinent part as follows:

> It is unlawful for a person or a political committee to place an advertisement supporting or opposing a candidate or a ballot issue for use on election day.

The commissioner advised, therefore, that a scheme to place materials on doorsteps with the deliberate intent that they be discovered on election day would be a violation of section 13-35-233(1), MCA.

Campaign funds may be deposited in interest-bearing accounts; reporting of interest and reporting in non-election year, AO 1988-5

On behalf of Montana NOW PAC, Cheryl Jenni asked if the PAC (political action committee) was required to file finance reports in non-election years and if the PAC could place idle funds into an interest-bearing account. If permitted to deposit funds in an interest-bearing account, she also asked if the interest earned would trigger the need to file additional reports.

The commissioner advised that political committees are required to file reports in non-election years under section 13-37-226(4), MCA, even though no expenditures may have been made to support or to oppose a candidate. In that case, only one report is required for the entire calendar year and is due no later than January 31 of the succeeding year.

The commissioner also advised that committee funds may be deposited into interest-bearing accounts, with interest earned to be reported on periodic campaign finance reports for Montana NOW PAC. All funds initially received must be deposited into the main checking account for the PAC, as the accounting and reporting manual states, but then may be transferred to a PAC savings or other interest-bearing account.

When campaign begins and ends; how to report; maximum contributions, AO 1988-6

Representative Tom Hannah asked (1) when a campaign officially begins and ends and (2) if the answer to his first question would permit maximum contributions to be made twice in one year. He suggested that money raised between "closing" one campaign and "opening" the next one is not covered by statute and asked if it would be reportable.

The commissioner advised that the term "campaign" is not defined in Montana statutes, but that when a person's campaign begins and ends is not the deciding issue. Rather, the crucial question in almost every case will be whether funds received or expended are for the purpose of influencing an election. The issue of how far in the future the election may occur is irrelevant. Money received and expended by a candidate in furtherance of his or her election must be reported regardless of when the election will occur.

The commissioner also advised that statutory maximum contributions could not be made to the same candidate twice in one year and that money raised by an individual before officially becoming a candidate is reportable.

Conditions when an employee is a lobbyist, AO 1988-7

Sharon M. Anderson on behalf of the Montana Deaconess Medical Center (MDMC) stated that, occasionally,

> . . . MDMC would like to send one of its employees to Helena to engage in conduct which may be broadly construed as lobbying. This employee would receive personal living and travel expenses which would not exceed $1,000.00 per calendar year in addition to his regular salary.

Anderson asked whether the circumstances as outlined would constitute "lobbying for hire" and whether the employee would be required to be licensed to lobby.

The commissioner advised that the employee would not be considered to be "lobbying for hire" under section 5-7-102(6), MCA, if it were a matter simple of incurring and being reimbursed for living and travel expenses that did not exceed $1,000; however, payment of the employee's salary while lobbying would constitute "lobbying for hire" and would require both licensing of the employee as a lobbyist and registering MDMC as the lobbyist's "principal."

Use of excess campaign funds for constituent services; funds received or solicited exclusively for constituent services not campaign funds, AO 1988-8

Representative Dick Simpkins of Great Falls asked two questions:

> 1. Is it permissible to use funds remaining in his 1988 campaign for constituent services?
>
> 2. Would contributions solicited to be spent exclusively for constituent services be considered campaign contributions and expenditures and therefore be subject to the campaign finance laws?

The commissioner advised that Montana law is silent as to the disposition of excess campaign funds; therefore, a candidate may use funds remaining in his or her campaign, once all campaign debts are discharged, for constituent services.

As to the second question, the key element revolves around statutory definitions for "contribution" and "expenditure." Those definitions are tied to the phrase "to influence an election" or "for the purpose of influencing an election." In the commissioner's opinion, therefore, funds solicited or received exclusively for constituent services and spent for such services would be neither campaign contributions nor expenditures

so long as communications with constituents so funded did not in any way advocate support for or opposition to a candidate or ballot issue.

The commissioner also advised that funds solicited and received exclusively for constituent services and not for a campaign must be deposited in an account separate from a campaign account. Further, funds remaining in a constituent services account may not be transferred to a campaign account.

IV. OTHER ACTIVITIES

Speaking Engagements and Workshops

+ At the request of Leo Graybill, the commissioner appeared as a speaker for a "Jefferson Meeting" in Great Falls on October 22, 1988, as part of the continuing celebration of the 200th anniversary of the United States Constitution.

+ On invitation, the commissioner was guest speaker at a meeting of the Helena Rotary Club on October 26, 1988, to explain the role and purpose of the commissioner's office and to talk about campaign finance, political practices and lobbying.

+ At the request of Jacque Irby, executive director of the State Republican Party, the commissioner conducted a workshop on campaign finance and political practices at the Republican Officers Convention in Missoula on June 2, 1989.

+ At the request of the State Democratic Party, the commissioner made a presentation at the Democratic Officers Convention in Billings on June 16, 1989 about campaign finance, political practices, and lobbying and about the role and responsibilities of the commissioner's office.

COGEL

Continuing the Montana membership in the Council on Governmental Ethics (COGEL)--an organization comprised of governmental agencies in the United States and Canada with responsibilities in campaign finance practice, lobbying, ethics, conflicts of interest, and personal financial disclosure--the commissioner paid dues for FY '89 and also participated in the annual COGEL conference in Orlando in September 1988.

One of the notable topics at the conference was the draft Model Law for Campaign Finance, Ethics, and Lobbying, a project of COGEL to pull together the best of laws from various jurisdictions with advice from leading practitioners in the topic areas.

25 copies of this public document were produced for free distribution; the publication amount is available from the commissioner's office. On request, additional reproductions are available at a cost of ten cents per page.